In the Supreme Court of the United States

October Term of 1924

No. 339

SOUTHERN UTILITIES COMPANY,
a corporation,
Petitioner,

vs.

CITY OF PALATKA,

BRIEF FOR RESPONDENT

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JACKSONVILLE PRINTING CO.

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BRIEF FOR RESPONDENT

The statement of fact and of the error relied upon as contained in the petitioner's brief is substantially correct. It is agreed that the decision of the case at bar is based on the application of the law as announced by this court in the case of Southern Iowa Electric Company v. Chariton, 225 U. S. 439, which is as follows:

> "Two propositions are indisputable:
>
> "(a) That although governmental agencies having authority to deal with the subject may fix and enforce reasonable rates to be paid public utility corporations for the services by them rendered, that power does not include the right to fix rates which are so low as to be confiscatory of the properties of such corporations;
>
> "(b) That where, however, the public service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contracts rates to

> govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial."

The petitioner's contention is that the contract here in question falls within the first proposition advanced in the above quotation upon the theory that Section 30 of Article 16 of the Florida Constitution prohibits contracts between the State of Florida or any agency thereof, and any person or corporation furnishing a public utility fixing the rate or charge for such service.

The provision in question is in the words following:

> "The legislature is vested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

The respondent's contention, and the decision of the Supreme Court of Florida in this case, is that contracts made by a municipality and a public Utility Company fixing service rates for the furnishing of electricity are valid and binding contractual obligations so long as the legislature does not exercise its "full power to pass laws" for the regulation of the same.

In Southern Iowa Electric Company v. Chariton, quoted above, the Court had under consideration Section 725 of Iowa Code, relating to the powers of municipalities:

> "Sec. 725. Regulation of Rates and Service. They shall have power - - - to regulate and fix the rent or rates for water, gas, heat and electric light or power - - - and these powers shall not be abridged by ordinance, resolution or contract."

The distinct holding in the case was that contracts a[illegible] rates for the public service enumerated in this section of the Iowa Code were expressly prohibited, and came within the first proposition quoted. The Supreme Court of Iowa, however, in the case of Ottumwa Ry. & Light Co. v. Ottumwa, 173 N. W. 270, wherein the Court had under consideration a contract fixing the fare charged by a street railway, held that such contract did not come within the section of the Code and was a valid and binding contract, coming within the second proposition quoted. In the last cited case the Court used the expression:

> "Code 1897, 725, prohibiting abridgement by contract of the power to fix and regulate the rents or rates of water, gas, heat and electric light or power, authorizes the city to make contract unalterably fixing the rate of fare to be charged by street railroad for a certain period not manifestly too long, since such statute enumerating charges as to which such contract can not be made, sanctions contract as to street car fares not therein enumerated."

The legislature of the State of Florida has construed Section 30 of Article 16 of the Florida Constitution that there is vested in the legislature the power to regulate rates to be charged by "persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature," properly and only exercised by the Legislature acting

under its constitutional power to "pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges."

This construction has been demonstrated by the legislature passing laws for the regulation of the rates of Street Railroads, water companies, and telephone and telegraph companies.

Triay v. Burr, 79 Fla. 290, 84 So. 61;

Tampa v. Tampa Waterworks Company, 45 Fla. 600, 34 So. 631;

Brooksville v. Brooksville Telephone Co., 81 Fla. 463, 88 So. 307;

State ex rel. Ellis v. Tampa Waterworks Co., 56 Fla., 858, 47 So. 358.

Miami Gas Co. v. Highleyman, 77 Fla. 523, 81 So. 775.

It can not be contended that the furnishing of electric lighting was not a public utility at the time the legislature passed the laws for the regulation of the charges of the utilities mentioned in the preceding paragraph. It would seem, therefore, that the legislature of the State of Florida sanctions contracts as to the furnishing of electric lighting not therein enumerated, as the Iowa Legislature sanctions contracts not enumerated in Section 725 of the Iowa Code.

The Supreme Court of Florida has so construed the section of the Florida Constitution (Section 30 of Article 16) in all of the rate cases where this question was presented.

In Tampa v. Tampa Waterworks Co., 45 Fla. 600, 34 So. 631, the Court said:

> "The Section in question does not operate to prevent the legislature from making contracts itself, nor from authorizing municipalities to make them, and in and by such contracts stipulating for certain rates, which will be valid and binding obligations so long as the legislature does not exercise or authorize municipalities to exercise the power to prevent excessive charges, which is declared by the section to be vested in the legislature. - - - The effect of this section is to reserve to the legislature full power at all times, notwithstanding any supposed contract not to exercise it, to require water companies and others mentioned in the section to comply with their common law obligation to supply their customers at a reasonable rate."

In State ex rel. Ellis v. Tampa Waterworks Co., 56 Fla. 858, 47 So. 358, the Court said:

> "The provision contained in the contract as to rates to be charged for the water is not void under the law, but it is subject to and is controlled by the right to the legislature to provide for regulating the rates under the provisions of Section 30, Article 16, of the Constitution."

In Miami Gas Company v. Highleyman, 77 Fla. 523, 81 So. 775, where the Court had under consideration a franchise contract between the City and Miami Gas Company (the legislature not having delegated the power to regulate gas rates), the Court said:

> "The bill of complaint and answer show a breach of the franchise contract by the defendant gas company. It is manifest that the contract contemplated the furnishing of meter service as a part of the undertaking to furnish gas to the consumers,

and that the contract charge for gas covered the meter service, the privilege of rendering the service being a franchise carrying exclusive rights. If the changed condition caused the contract to work a hardship on the defendant, the Courts may not, for that reason, decline to enforce the rights of the parties under the contract voluntarily entered into by the defendant. See Columbus Ry. etc. v. City of Columbus, 249 U. S....., 39 Sup. Ct. 349, 63 L. Ed....."

In State ex rel. Triay v. Burr, 79 Fla. 290, 84 So. 61, the Court said:

"As to the rights of the City and of the public, in contract rates, where the state has not interposed its authority, see Columbus Railway, Power & Light Co. v. City of Columbus, 249 U. S. 399, 39 Sup. Ct. 349, 63 L. Ed. 669; Miami Gas Company v. Highleyman, 81 So. 775; City of Manitowoc v. Manitowoc & N. Traction Co., 145 Wis. 13, 129 N. W. 925, 140 Am. St. Rep. 1056.... In the exercise of the power expressly recognized in Section 30, Article 16 of the Constitution, to pass laws upon the subject, the legislature enacted statutes as shown by the titles." (Acts providing for the regulation of street and other railroads.)

In Town of Brooksville v. Florida Telephone Company, 81 Fla. 436, 88 So. 307, a suit to enjoin the telephone company from charging more than the franchise rate, where such increase had been authorized by the Railroad Commission, the Court said:

"By Chapter 6525 power is given to the Railroad Commission to regulate rates, tolls, contracts and charges of telephone companies doing business in the State. That the business of the defendant is so affected by public interest as to permit its reasonable regulation by public authority is not dis-

> puted. This Court has held that rates or tolls to be charged by a public service corporation for services rendered, fixed by a municipality by ordinance as an incident to the granting of a franchise to it by such municipality are subject to legislative control."

This Court, in adopting the construction of this section by the Supreme Court of Florida, in Tampa Waterworks Company v. Tampa, 199 U. S. 341, 26 Sup. Ct. Rep. 23, where the Florida legislature had provided for the regulation of water rates, it said:

> "A natural method of preventing excessive charges is the passage by the city or town within which the services are performed of ordinances establishing reasonable rates and punishing noncompliance. Therefore the power to prevent excessive charges, given to the legislature, properly was exercised by a law granting cities authority to pass ordinances of the kind supposed."

When the legislature does exercise the power vested in it by Section 30 of Article 16 of the Florida Constitution and by laws provide for the regulation of rates covered by a particular contract, then the power and the duty to regulate such rates are reciprocal.

And, while it is true that the power to regulate such rates can not be bartered away or defeated by contract, the distinct holding of the Florida decisions has been that contracts fixing rates to be charged by public utility companies are made with the expectant possibility that the legislature will pass laws providing for the regulation of the rates covered by the contract; but until the legislature does pass such laws and thereby provide for the regulation of such rates, the contract is a valid and binding obligation. This construction places

contracts as to the particular public utility, where the legislature has not interposed its authority within the rule laid down in proposition (b) of Southern Iowa Electric Co., v. Chariton, Supra.

City of Opelika v. Opelika Sewer Co., 265 U. S. 215.

St. Cloud Public Service Co. v. City of St. Cloud, 265 U. S. 352.

The Supreme Court of the State of Florida has decided in this case that the franchise ordinance and the acceptance thereof form a valid contract between the petitioner and the respondent, and the Court will follow the decision of the Supreme Court in this respect.

City of Opelika v. Opelika Sewer & Water Co., 265 U. S. 215.

Maguire v. Reardon, 225 U. S. 271.
Elmendorf v. Taylor, 10 Wheat. 152.
Old Colony Trust Co. v. Omaha, 230 U. S. 100.
Hunter v. Pittsburg, 207 U. S. 161.

It is respectfully submitted that, in order to reverse this case, it would be necessary for the Court to construe the Constitution of the State of Florida adverse to the construction placed upon it by the highest tribunal of the State.

J. J. Cannon

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Counsel for Respondent.